IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 3879 of 2006()

CP.61/1995 (L.P.NO.30/96) of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER: 2ND ACCUSED:

SAJIKUMAR PILLAI,
KALLELIL VEEDU, NADUVILAKKARA CHERI,
MAYYANADU VILLAGE.

BY ADV. SRI.BIMAL K.NATH
SRI.S.JAMAL
SRI.SREEVALSAN.V

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE S.I. OF POLICE, KOTTIYAM,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3879 OF 2006

Dated this the 7th day of December, 2006.

ORDER

The petitioner is accused No.2 in a prosecution, inter alia, under Section 333 read with 149 I.P.C and Section 3 of the Explosive Substance Act, 1908. The co-accused have already been tried, found not guilty and acquitted. But the petitioner who was not available for trial is facing the prosecution still, it is submitted. The case against him has been split up and transferred to the list of Long Pending cases, it is contended. The petitioner has come to this Court now with a prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings against him in as much the co-accused had already been found not guilty and acquitted.

2. After discussions at the Bar, the learned counsel for the petitioner fairly accepts that in the light of the decision in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552(F.B)], the mere acquittal of the co-accused cannot ip so facto justify an order quashing the proceedings against the co-accused. I am satisfied that in the light of that decision, the petitioner cannot succeed in his prayer for quashing the proceedings.

3. The learned counsel for the petitioner submits that the petitioner now wants to surrender before the learned Magistrate. He

prays that direction under Section 482 Cr.p.C may be issued in his favour to the learned Magistrate to release him on bail when he surrenders and applies for bail.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

5. In the result, this Crl.M.C is dismissed. But with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself, unless there are compelling and exceptional reasons.

R.BASANT
JUDGE

rtr/